

Genetic Information Nondiscrimination Act

Section-by-Section Analysis

Title II Employment

Sec. 201. Definitions – The section defines the parties covered by the act – employer, employment agency, labor organization – and ensures that state, federal and congressional employees receive the same protections. Family members are defined as the spouse or dependent child of an individual, including adopted children, and all other individuals related by blood to the individual or his/her spouse. Genetic information is defined as information about genetic tests of an individual or his/her family member. Genetic information also means information about the occurrence of disease or disorder in family members of the individual. It does not, however, include information about the sex or age of an individual. The section defines genetic monitoring, services and tests consistent with Title I.

Sec. 202. Employer Practices – An employer is prohibited using genetic information to discriminate against an individual in employment. The section also makes it unlawful for an employer to request, require, or purchase or retain genetic information regarding its employees. The act does, however, provide a number of exceptions. Thus, it does not violate the act where an employer inadvertently acquires family medical history information; acquires the information pursuant to an employer-sponsored wellness program; or, in conjunction with its obligations under federal or state family and medical leave laws. Similarly, it does not violate the act where an employer purchases family medical history information that is publicly available through such items as newspapers, periodicals and books; or where the information is used for genetic monitoring of the biological effects of toxic substances in the workplace. Although genetic information may be lawfully acquired under these exceptions, the section makes clear that the employer still may not use or disclose the information in violation of the Title.

Sec. 203. Employment Agency Practices – This section extends parallel obligations and exceptions to employment agencies as apply to employers under Sec. 202.

Sec. 204. Labor Organization Practices – This section extends parallel obligations and exceptions to labor organizations as apply to employers under Sec. 202.

Sec. 205. Training Programs – This section extends parallel obligations and exceptions to joint labor-management committees as apply to employers under Sec. 202.

Sec. 206. Confidentiality of Genetic Information – This section provides that an individual's genetic information shall be treated and maintained as part of the individual's confidential medical records. Disclosure is prohibited, except to: the individual; an occupational or health researcher; in response to an order of a court; to government officials investigating compliance with this Title; or to the extent that disclosure is made in connection with federal or state family and medical leave laws.

Sec. 207. Remedies and Enforcement – The bill incorporates by reference the powers, remedies, and procedures set forth in the Civil Rights Act of 1964, as amended. Similar powers, remedies and procedures are specified for state, federal and congressional employees.

Sec. 208. Disparate Impact. The bill prohibits claims based on disparate impact (unintentional discrimination). It also provides for the establishment of a commission, in six years, to review this matter and make recommendations to Congress as to whether or not the Act should be amended to provide a cause of action based upon disparate impact.

Sec. 209. Construction – This section provides several rules of construction to clarify the intent of the Committee and to assist courts in interpreting the Title. The section makes clear that this Title shall not be construed to limit the rights or protections of individuals under the Americans with Disabilities Act or the Rehabilitation Act of 1973. Similarly, the section makes clear that Title II governs employment practices exclusively, and does not create any causes of action against employers for alleged violations of Title I. The section further clarifies that the Act sets the floor for individual rights and protections and does not limit the rights and protections under other federal or state laws. Workers compensation laws are neither expanded nor restricted by the bill. Finally, the section provides rules of construction to ensure the proper operation of federal programs and laws, including the Armed Services Repository of Specimen Samples, occupational health and safety research, and workplace safety and health laws and regulations.

Section 210. Medical Information that is Not Genetic Information – The section clarifies that an employer, employment agency, labor organization or joint labor-management committee shall not be prohibited by this Title from using, acquiring or disclosing medical information (other than genetic information) about a manifested disease, disorder or pathological condition of an individual, even when such disease, disorder or condition has or may have a genetic basis. In other words, the fact that a person is sick with a disease, disorder or pathological condition shall not be treated as knowledge of a genetic predisposition for the sickness.

Sec. 211. Regulations – The EEOC is charged with issuing final regulations under this Title within one year of enactment.

Sec. 212. Authorization of Appropriations – Such sums as may be necessary.

Sec. 213. Effective Date – Eighteen months after enactment.